IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 3289 of 2007()

CRA.253/2004 of SESSIONS COURT, MANJERI
CC.473/1999 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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REVN. PETITIONER: PETITIONER/APPELLANT/ACCUSED

HANEEFA, S/O.KUNCHEEDU, AGED 32 YEARS,
VAKKAT HOUSE, PERUMANNA, KALARI DESOM,
TIRUR, KUTTIPPURAM.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.P.C.ANIL KUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3289 OF 2007

Dated this the 14th day of September, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.473/99 on the file of the JFCM, Tirur, for offences punishable under sections 454, 380 and 461 IPC, challenges the conviction entered and the sentence passed concurrently by the courts below for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

On 20.1.97 at about 11.45 in the morning the accused criminally trespassed into the house of PW1, a lady doctor, bearing door No.XX/507 of Tirur Municipality through the door on the northern side of the house and after breaking open the almirah therein, he committed theft of gold ornaments weighing 351 gms, currency notes totalling of Rs.7,000/-, one Hitachi VCP and a lady's watch.

3. On the side of the prosecution, 12 witnesses were examined as PWs 1 to 12 and 6 documents were marked as Exts.P1 to P6 and one material object as MO1.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 31.3.04 found the revision petitioner guilty of the offences punishable under section 380 and 454 IPC but acquitted him of the offence punishable under section 461 IPC. For the conviction under sections 380 and 454 IPC, he was sentenced to simple imprisonment for one year each with a direction that the sentences shall run concurrently. Eventhough he preferred an appeal before the Additional Sessions Court(Adhoc-II), Manjeri as Criminal Appeal No.253/04, the same was dismissed confirming the conviction entered and the sentence passed. It is the said judgment which is assailed in this revision.

6. The learned counsel appearing for the revision petitioner assailed the conviction entered and the sentence passed against the revision petitioner contending as follows:-

The recovery evidence in this case cannot be relied on against the revision petitioner since the revision petitioner who was arrested in connection with some other crime was not formally arrested in this case. This was a false case foisted against the revision petitioner upon his apprehension. This was really an undetected case and the police were falsely implicating the revision petitioner in this case as well.

7. I am afraid that I cannot agree with the above submissions. PW1, the defacto complainant, is a lady doctor. Her husband is also a doctor. She was, at the relevant time, working as Medical Officer, Primary Health Centre, Vettom. Herself and her husband were residing at Chirakkal building near the Government Hospital, Tirur. On 20.1.97, she went to the hospital at about 8.45 a.m. after sending her daughter to school. Her husband had gone to Kozhikode in connection with some personal matters. While leaving the house, PW1 had locked the door as well as the grill of the house. When she returned home after her work and entered the house, she found the almirah lying wide open. The kitchen door of the house was also lying open. She found 33.14 sovereigns gold ornaments, Rs.7,000/- by way of

cash and a VCP were missing from the house. She thereupon lodged Ext.P1 F.I.Statement before the Trirur Police Station. At about 3.30 p.m. on the same day the Circle Inspector of Police, Tirur came to her house and recorded her statement. She told the police that she has sustained a total loss of Rs.1,67,000/-. PW11 is the police officer, who stumbled upon the accused on 20.2.98 from the vicinity of Thirunavaya Railway Gate while on patrol duty in connection with the festival at Vairangode temple. He questioned the accused in connection with crime No.483/97 of Tirur Police Station. Consequent on the confession statement made by the accused, PW11 filed the report in court on 21.2.98 for re-opening the investigation which had been closed as undetected on 28.8.97. On the strength of the confession made by the accused PW11 proceeded to Kokkans Jewellery at Kottakkal as led by the accused. The accused pointed out the jewellery owner at the cash counter. The jewellery owner identified the accused and produced two pieces of gold ingots weighing 56.3 gms and 61.4 gms each. The gold was seized under Ext.P2 mahazar. Thereafter, on the basis of Ext.P6(a) confession made by the accused, PW11 went to Mangalya Jewellery at Valanchery and

pointed out the owner of the said jewellery shop. The owner identified the accused and produced 5 pieces of gold ingots which were seized under Ext.P6 mahazar. Consequent on the confession by the accused, he led the police party to the workshop at Changuvetty and recovered MO1 VCP from an unused well near an automobile workshop. The VCP was seized by PW11 under Ext.P4 mahazar. The witnesses to the recovery of gold as aforesaid have admitted that the accused had sold the gold ornaments in question to them and that they had converted the same to gold ingots. The ingots produced before court were found tallying with the weight of the gold ornaments allegedly lost by PW1. PW1 has convincingly deposed before court about the theft committed in her house. PW2 is an Advocate and her husband is a medical practitioner. She is a neighbour of PW1. At about 11.30 a.m. on 20.1.97 when she was spreading wet cloths on the cloth line, she saw the accused standing near the back door of the house of PW1. She then went to take her bath in the bathroom. She then saw the accused peeping into the house of PW1 through the ventilator. She had informed the matter to the nearby medical shop but they could not trace out the intruder. Subsequently, in

the afternoon, she came to know that a theft had taken place in the house of PW1. She identified the accused as the person who was seen prowling near the house of PW1.

8. The conviction recorded by the courts below is on the basis of a careful evaluation of the oral and documentary evidence in the case. I see no infirmity in the appreciation of evidence by the courts below. The conviction is accordingly confirmed.

9. The sentence imposed on the revision petitioner also cannot be said to be excessive or disproportionately harsh. The revision petitioner is admittedly involved in other theft cases and the sentence of imprisonment imposed on the revision petitioner is in no way excessive. I see no reason to interfere with the sentence as well.

In the result, this revision which is devoid of any merit, is dismissed.

(V. RAMKUMAR, JUDGE)

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